HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Criminal Misc. Application No. 485 of 2001
(Old No. 2759 of 1987)

Bishan Dayal Agarwal .....Applicant

Versus

State .....Opposite Party

Approved for reporting

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Not approved for reporting.

Date of Decision 22nd February, 2004.

Initial of Judge.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc. Application No. 485 of 2001
(Old No. 2759 of 1987)

Bishan Dayal Agarwal
S/o Sri Lal Chand
R/o Lower Bazar
Joshimath
District Chamoli .....Applicant

Versus

State .....Opposite Party

Sri R.P. Nautiyal learned counsel for the applicant
Learned A.G.A. counsel for the State.

Hon'ble B.C. Kandpal, J.

This criminal miscellaneous application under Section 482 Cr.P.C. has been preferred by the applicant Bishan Dayal Agarwal for quashing the proceedings in Special Trial No. 4 of 1986 State Vs. Bishan Dayal under Section 3/7 of the Essential Commodities Act, 1955 P.S. Joshimath District Chamoli pending in the court of Special Judge, Chamoli.

Brief facts giving rise to this petition are that prosecution was launched against the applicant on the ground that he has contravened the provision of clause-9 of U.P. Cement Control Order, 1973 as the Sub-Divisional Magistrate, Joshimath found 70 bags of cement in the house of one Kalika Prasad Bhatt. The S.D.M. was of the view that these cement bags had been kept over there illegally.

The chargesheet was submitted against the applicant for violating the clause-9 of the U.P. Cement Control Order, 1973 as well as 3/7 of the Essential Commodities Act, 1955.

The opposite party i.e. the State filed the counter affidavit stating therein that the cement bags were found in the godown

and the same were in the illegal custody of the applicant who had contravened the provision of clause-9 of the U.P. Cement Control Order, 1973.

Heard learned counsel for the applicant as well as learned A.G.A. and perused the record.

Sub-clause 1 of 9 of the U.P. Cement Control Order, 1973 runs as follows:-

"9. BAN ON TRANSFER OF CEMENT BY CONSUMERS.

(1) Any person who obtains cement according to the order of the licensing authority issued under clause 8 or otherwise purchases it from a licenced dealer or direct from a cement company as a result of an allotment by the State Government shall utilize it for his own purposes and he shall not dispose it of by way of loan or otherwise transfer it in any manner."

A bare perusal of Section 11 of the Essential Commodities Act, 1955 reveals that:-

"11. COGNIZANCE OF OFFENCES. No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence (by order of, or under authority from the District Magistrate or such other officer as may empowered by the State Government by general or special order in this behalf.)"

After reading of the aforesaid two provisions, it appears to me that it is a condition precedent for taking the cognizance under Section 11 of the Essential Commodities Act that a report must be in writing of the facts constituting the offence under the

provision of clause 9 of the U.P. Cement Control Order, 1973. Clause 9 of U.P. Cement Control Order, 1973 which provides a ban on transfer of cement by the consumers and there is no allegation in the report submitted by the S.D.M. that the recovered cement was not being utilized for its own purpose or was being disposed of by way of loan or otherwise transfer in any manner. It has also not been shown that these recovered bags of cement have been purchased by any manner other than the licence dealer. It is mandatory to mention the fact for constituting the offence and in absence of any allegation, the court had no jurisdiction to take cognizance of the alleged offence as contemplated by Section 11 of the Essential Commodities Act, 1955.

I am of the definite view that the trial court by taking the cognizance in the matter in question has committed a manifest error and the same amounts the abuse of process of court.

I find sufficient ground to invoke inherent jurisdiction under Section 482 Cr.P.C. in order to secure the ends of justice and to prevent the abuse of process of court.

Accordingly, the chargesheet filed against the applicant is hereby quashed.

The petition under Section 482 Cr.P.C. is allowed.

The chargesheet filed against the applicant before the trial court is quashed.

(B.C. Kandpal, J.)

February 22, 2005
ASWAL